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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1944

No. 68

THE CITY OF CLEVELAND, APPELLANT,

vs.

THE UNITED STATES OF AMERICA AND FEDERAL PUBLIC HOUSING AUTHORITY

No. 69

JOHN J. BOYLE, COUNTY TREASURER OF CUYAHOGA COUNTY, JOHN A. ZANGERLE, COUNTY AUDITOR OF CUYAHOGA COUNTY, BOARD OF COUNTY COMMISSIONERS OF CUYAHOGA COUNTY, OHIO, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA AND FEDERAL PUBLIC HOUSING AUTHORITY

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO

FILED APRIL 24, 1944.

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INDEX.

	Original	Print
Record from D. C. U. S., Northern Ohio	1	1
Caption (omitted in printing)	1	
Complaint	2	1
Motion for temporary injunction	9	7
Answer of the City of Cleveland	10	7
Answer of John J. Boyle, et al.	15	11
Stipulation as to certain facts	18	14

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—3147

	Original	Print
Record from D. C. U. S., Northern Ohio—Continued		
Memorandum opinion, Allen, J.	20	15
Dissenting opinion, Jones, J.	25	20
Findings of facts and conclusions of law	27	22
Exceptions of City of Cleveland to findings of fact and conclusions of law (omitted in printing)	30	
Judgment	32	24
Motion for new trial by county defendants (omitted in printing)	35	
Motion for new trial by City of Cleveland (omitted in printing)	37	
Motion by City of Cleveland to amend findings of fact and conclusions of law	38	27
Order amending findings of fact	39	27
Order overruling motion of county defendants for a new trial (omitted in printing)	40	
Order overruling motion of City of Cleveland for a new trial (omitted in printing)	41	
Petition for appeal by City of Cleveland (omitted in printing)	42	
Petition for appeal by John J. Boyle, et al. (omitted in printing)	43	
Assignments of error by City of Cleveland	44	28
Assignments of error by John J. Boyle, et al	47	30
Order allowing appeal of City of Cleveland	48	31
Order allowing appeal of John J. Boyle, et al	49	32
Citations (omitted in printing)	50	
Order enlarging time to docket case (omitted in printing)	52	
Stipulation as to record (omitted in printing)	53	
Clerk's certificate (omitted in printing)	56	
Statement of points of City of Cleveland and designation of portions of record to be printed	57	33
Statements of points of John J. Boyle, et al. and designation of portions of record to be printed	61	36
Order postponing further consideration of the jurisdiction until the hearing on the merits	64	38

[fol. 1] [Caption omitted]

[fol. 2] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

Civil No. 21897

UNITED STATES OF AMERICA AND FEDERAL PUBLIC HOUSING AUTHORITY, Plaintiffs,

v.

JOHN J. BOYLE, County Treasurer of Cuyahoga County, Ohio, John A. Zangerle, County Auditor of Cuyahoga County, Ohio, Board of County Commissioners of Cuyahoga County, Ohio, and City of Cleveland, Defendants

COMPLAINT—Filed July 14, 1943

The United States of America and the Federal Public Housing Authority, by Don C. Miller, United States Attorney for the Northern District of Ohio; and Assistant United States Attorney, acting under instructions from the Attorney General of the United States, allege and state:

I

The jurisdiction of this court is based upon the fact that the United States is the plaintiff herein, and on the additional fact that the matter in controversy arises under the Constitution and laws of the United States and involves more than the sum of Three Thousand Dollars ($3,000.00), exclusive of interest and costs.

II

The plaintiff, Federal Public Housing Authority, is a Government corporation, wholly owned by the United States, which was originally created as the United States Housing Authority under Section 3 of the Act of Congress of September 1, 1937 (50 Stat. 889), and is now known [fol. 3] as the Federal Public Housing Authority by reason of Executive Order No. 9070, dated February 27, 1942.

III

The defendant John J. Boyle, is the duly elected and qualified Treasurer of Cuyahoga County, Ohio, the defendant, John A. Zangerle, is the duly elected and qualified Auditor of Cuyahoga County, Ohio, the defendant, Board of County Commissioners of Cuyahoga County, is a body politic and a subdivision of the State of Ohio, and the defendant, City of Cleveland, is a municipal corporation in the County of Cuyahoga, Ohio. All the said defendants are residents of the Northern District of Ohio.

IV

On the dates hereinafter mentioned, the United States, through the Federal Emergency Administrator of Public Works, pursuant to and in order to carry out the purposes of Title II of the Act of June 16, 1933, 48 Stat. 201 (40 U. S. C. A. 401, 402, 403), acquired title to that certain real estate in Cuyahoga County, Ohio, which is described on the tax duplicates of Cuyahoga County, Ohio, as follows:

(1) Book 44, Item 532: "Original Lots 60 and 61, converse and other subdivisions. Between Cedar and Central Streets west line of East 28th to East 30th Streets."

(2) Book 44, Item 533: "Original Lots 57, 58, 59, and 60. Between Cedar and Central Streets and west line of 28th Street to a point 1102.47 feet west on Cedar."

(3) Book 44, Item 546: "Scovill Avenue to Case Court, west of East 55th Street to East 40th Street."

(4) Book 79, Item 444: "Block A, Division Street, original Lot 51 of 450.28 feet by 316.83 feet."

(5) Book 79, Item 445: "Original Lot 51 on Division Street, Block B. 416.86 feet frontage on Division Street."

[fol. 4] (6) Book 79, Item 446: "Original Lot 51, Division Street, Block F, frontage 428.23 feet."

(7) Book 79, Item 447: "Original Lot 51, on Division Street, Block G. having a frontage of 608.05 feet."

(8) Book 79, Item 453: "Original Lot 51, fronting on West 25th Street. Block C, frontage 136.57 feet."

(9) Book 79, Item 454: "Original Lot 51, West 25th Street, Block D, frontage 444.25 feet on West 25th St."

(10) Book 79, Item 455: "Original Lot 51, West 25th Street, Block E, frontage 221.31 feet on West 25th Street."

V

Title to the land referred to in subparagraphs 1 and 2 of Paragraph IV herein (now known as the Cedar Central Project), vested in the United States on September 10, 1934, pursuant to two Declarations of Taking filed on that date in condemnation proceedings instituted in the United States District Court for the Northern District of Ohio, entitled *United States* v. *Certain Lands in the City of Cleveland, Advance Loan Company, et al.*, Civil No. 18075, and *United States* v. *Certain Lands in the City of Cleveland, Charlotte Allen, et al.*, Civil No. 18076.

Title to the land described in subparagraph 3 of Paragraph IV herein (now known as the Outhwaite Project), vested in the United States on February 18, 1935, pursuant to three Declarations of Taking filed on that date in condemnation proceedings in the United States District Court for the Northern District of Ohio, entitled *United States* v. *Certain Lands in the City of Cleveland, Natale Argento, et al.*, Civil No. 18301, *United States* v. *Certain Lands in the City of Cleveland, Guiseppe Anello, et al.*, Civil No. 18302, and *United States* v. *Certain Lands in the City of Cleveland, Cleveland Trust Company, et al.*, Civil No. 18303. [fol. 5] Title to the land described in subparagraphs 4 to 10, inclusive, of Paragraph IV herein (now known as the Lakeview Terrace Project), vested in the United States on April 16, 1935, pursuant to three Declarations of Taking filed on that date in condemnation proceedings in the United States District Court for the Northern District of Ohio, entitled *United States* v. *Certain Lands in the City of Cleveland, Edward J. Aylward, et al.*, Civil No. 18368, *United States* v. *Certain Lands in the City of Cleveland, Winifred Ashley, et al.*, Civil No. 18369, and *United States* v. *Certain Lands in the City of Cleveland, Baker Raulang Company, et al.*, Civil No. 18370.

VI

Pursuant to Executive Order No. 7732, effective November 1, 1937, all right, interest and title to said land was transferred to the United States Housing Authority (now the Federal Public Housing Authority) and said land continually since the dates of its acquisition as aforesaid, up to and including the present time, has been and now is owned by the United States or its wholly owned instrumentality, the Federal Public Housing Authority. This property has been continuously used since its acquisition as a site for low-cost housing development and in connection with this use there have been constructed on said land by the plaintiffs certain buildings and structures. Since January 1, 1940, the property has been leased for active management purposes to the Cleveland Metropolitan Housing Authority, a state housing authority organized under the "State Housing Authority Law of Ohio," Sec. 1078-29 ff, Ohio General Code.

VII

This land, together with the buildings, appurtenances and improvements thereon, since its acquisition by the United States, has been immune from state taxation under the Constitution of the United States and, under Section 5 [fol. 6] of the Act of September 1, 1937 (50 Stat. 890) 42 U. S. C. A. 1409 (e), property of the United States Housing Authority (now the Federal Public Housing Authority) has been specifically declared to be exempt from all taxation by any state, county, municipality or local taxing authority.

VIII

Although said land and improvements were and are not subject to taxation, taxes have been unlawfully assessed thereon as follows:

(a) For the years 1935 to 1942, inclusive, in the sum of $512,973.45, against the Cedar Central Project referred to in subparagraphs 1 and 2 of the description in Paragraph IV herein.

(b) For the years 1935 to 1942, inclusive, in the sum of $485,928.75, against the Outhwaite Project referred to in subparagraph 3 of the description appearing in Paragraph IV herein.

(c) For the years 1936 to 1942, inclusive, in the sum of $559,912.63, against the Lakeview Terrace Project described in subparagraphs 4 to 10, inclusive, of Paragraph IV herein.

IX

The defendant, John J. Boyle, County Treasurer of Cuyahoga County, Ohio, is actively asserting that these taxes, together with the accumulated interest and penalties thereon, are proper and lawful and constitute liens against said lands and buildings. Said defendant, John J. Boyle, has continuously demanded of the plaintiff that the taxes, penalties, and interest, be paid, and unless enjoined by order of this court will continue to attempt to enforce collection of the alleged tax liens and will proceed to sell this property at tax sales for non-payment of said taxes, interest and penalties and, pursuant to Section 5703, Ohio General Code, will seek the appointment of a receiver to manage said property for the purpose of enforcing collection of the invalid taxes, interest and penalties—all to the plaintiffs's immediate, irreparable injury, loss and damage. The alleged [fol. 7] tax liens constitute an encumbrance and cloud on the plaintiffs' title and the threatened tax sales and proceeding to enforce collection will subject the plaintiffs to innumerable suits and will constitute a direct and irremediable interference with the normal control, administration, and disposition of said property.

X

Although said lands and improvements are not subject to taxation, the defendant, John A. Zangerle, has placed this property on the assessment rolls and on the tax duplicates for the current tax year and, unless restrained by order of this court, will continue to assess this property in the future. The defendants, Board of County Commissioners and City of Cleveland, unless restrained by order of this court will continue to levy taxes thereon, thus wrongfully encumbering the plaintiffs' title, subjecting the plaintiffs to innumerable suits and irremediably interfering with normal control, administration and disposition of said property.

XI

The laws of the State of Ohio relating to the taxation of real property, in particular Ohio General Code, Secs. 5328 and 5625-3, as interpreted by the defendants to apply to property owned by the United States and the Federal Public Housing Authority, contravene the Constitution of the United States.

Wherefore, plaintiff prays:

1. That a temporary injunction issue restraining the defendant John J. Boyle, from collecting or taking any action seeking the collection of taxes, interest and penalties upon or against said property and from taking any action leading to the sale of said property for non-payment of the aforesaid taxes, interest and penalties.

2. That a temporary injunction issue enjoining and restraining the defendants, John A. Zangerle, Board of County Commissioners, and City of Cleveland from assessing, levying, or attempting to assess or levy taxes against said property as long as it continues to be owned by the [fol. 8] Federal Public Housing Authority or the United States.

3. That the aforesaid taxes, interest and penalties levied and assessed against this property be declared void.

4. That upon final hearing the temporary injunction be made permanent.

5. For the costs of this action.

6. For such further relief as the court may deem necessary and proper.

Don C. Miller, United States Attorney, Frank E. Steel, Assistant United States Attorney. This. L. McKevitt Attorney, Department of Justice.

Duly sworn to by Don C. Miller. Jurat omitted in printing.

[fol. 9] [File endorsement omitted.]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO

[Title omitted]

MOTION FOR TEMPORARY INJUNCTION—Filed July 14, 1943

The plaintiffs in the above case, by Don C. Miller, United States Attorney, and Frank E. Steel, Assistant United States Attorney, move the court on the verified complaint to grant temporary injunctions against the defendants and each of them pending this suit and until further order of the court, conformable to prayers 1 and 2 of the complaint in this case filed.

Plaintiffs pray that Your Honor call to his assistance to hear and determine this motion two other judges in accordance with the provisions of Section 266 of the Judicial Code, 28 U. S. C. A. 380, in that an interlocutory injunction is sought on the basis of the unconstitutionality of a state law.

Plaintiffs further pray that the hearing on this motion be expedited and set down for hearing at the earliest practicable date. Dated this 14th day of July, 1943.

Don C. Miller, United States Attorney; Frank E. Steel, Assistant United States Attorney.

[fol. 10] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

[Title omitted]

ANSWER OF THE CITY OF CLEVELAND—Filed August 31, 1943

I

Now comes the City of Cleveland, and for its answer to the complaint filed herein, admits the allegations contained

II

For want of knowledge this answering defendant denies that the United States, through the Federal Emergency Administrator of Public Works, acquired title to the real estate described in Item IV of plaintiff's complaint, but admits that it is described on the tax-duplicates of Cuyahoga County, as set forth in Item IV.

III

For want of knowledge this answering defendant denies that titles vested in the United States in the manner and at the times set forth in Item V of plaintiff's complaint, but admits that said properties appear of record in the name of the United States, or an instrumentality thereof.

IV.

With respect to Item VI of plaintiff's complaint, this answering defendant admits the existence of Executive Order No. 7732, effective November 1, 1937, but for want of knowledge denies that all right, interest and title to said land was thereby transferred to the United States Housing Authority, now known as the Federal Public Housing Authority, and for want of knowledge denies that it has been and now is owned by the United States or its wholly-owned [fol. 11] instrumentality, the Federal Public Housing Authority. This answering defendant admits that the property has been used for a low cost housing development, and that in connection with this use there has been constructed on some of said lands certain buildings and structures; and admits that since January 1, 1940, the property has been leased for active management purposes to the Cleveland Metropolitan Housing Authority, and that said Cleveland Metropolitan Housing Authority is a state housing authority organized under and by virtue of the laws of the State of Ohio.

V

Respecting Item VII of plaintiff's complaint, defendant denies that the land, together with buildings, appurtenances and improvements thereon, since its acquisition by the United States, has been immune from state taxation under the Constitution of the United States; admits that under

Section 5 of the Act of September 1, 1937 (50 Stat. 890) 42 U. S. C. A. 1405 (e) the Congress of the United States attempted to declare that the property was exempt from taxation by any state, county, municipality or taxing authority, but this answering defendant avers that said Act of September 1, 1937, is illegal, invalid and contravenes the Constitution of the United States of America.

VI

Respecting Item VIII of plaintiff's complaint, this answering defendant denies the allegation that "said land and improvements are not subject to taxation and that taxes have been unlawfully assessed thereon." Defendant admits that taxes have been assessed for years 1935 to 1942, inclusive, but for want of knowledge denies that they have been assessed in the amounts set forth in Item VIII of plaintiff's complaint.

VII

Respecting Item IX of plaintiff's complaint, this answering defendant admits that John J. Boyle, as County Treasurer of Cuyahoga County, is actively asserting that these taxes, together with accumulated interest and penalties thereon, are proper and lawful, and constitute liens against said lands and buildings, and that he will attempt to collect the same. For want of knowledge this defendant [fol. 12] denies what means the said County Treasurer will resort to to enforce the collection of said taxes.

VIII

Respecting Item X of plaintiff's complaint, this answering defendant denies the allegation "that said lands and improvements are not subject to taxation," but admits that John A. Zangerle, as County Auditor of Cuyahoga County, Ohio, has placed this property on the assessment rolls and on the tax duplicates for the current tax year.

IX

This defendant denies that the laws of the State of Ohio relating to taxation of real property, and in particular sections 5328 and 5625-3, contravene the Constitution of the United States, as set forth in Item X of plaintiff's complaint.

X

This answering defendant says that if section 5 of the Act of September 1, 1937, and particularly that part of it known as 42 U. S. C. A: 1405 (e) is legal and constitutional, then this defendant says that it is not the intention of Paragraph e to exempt The Authority from the payment of special assessments and improvements which add to the value of the specific property and which are not levied or assessed as general taxes, and this answering defendant says that such special assessments are obligations that the Authority must pay even though they may be held exempt from the payment of general taxes.

XI

This defendant further says that under the laws of the State of Ohio specific provisions are made for the exempting of property of the United States from taxation when used for a public purpose, but this defendant avers that in using this land for the purpose of constructing housing facilities which are rented to individuals and in leasing said properties to the Cleveland Metropolitan Housing Authority, a State Housing Authority who in turn sublets it to individuals, it is under such circumstances not being used for a public purpose under the laws of the State of Ohio or under the Constitution and laws of the United [fol. 13] States, and plaintiff is not entitled to have said properties exempt from taxation.

XII

This answering defendant further avers that the Constitution of the United States does not contain an express provision exempting from taxation the property of the United States situated in various states, nor does it prohibit such taxation; neither does it delegate such power to the United States. Defendant says that by virtue of the Tenth Amendment to the Constitution of the United States, powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved by it to the states respectively or to the people. That, while the laws of the State of Ohio exempt property of the United States, used for a public purpose, from taxation, nevertheless by section 5570-1 of the General Code of Ohio,

as amended August 21, 1941, the State of Ohio has prescribed the procedure for claiming tax exemption and for placing the property of record on the exempt list, yet the plaintiff has failed and neglected to take any steps to secure exemption as required by the laws of the State of Ohio; that even if these properties should be exempt, the plaintiff has not exhausted its ordinary legal remedies and is not entitled to the extraordinary relief sought herein.

XIII

Defendant denies each and every allegation in plaintiff's complaint, not herein specifically denied, qualified or admitted to be true.

Wherefore, having fully answered, this defendant prays that plaintiff's complaint be dismissed and that it go hence without day and recover its costs herein.

Thomas A. Burke, Jr., Director of Law; Joseph F. Smith, Assistant Director of Law, Attorneys for Defendant, City of Cleveland.

[fol. 14] ACKNOWLEDGMENT OF SERVICE

A copy of the foregoing answer was served upon me this 31st of August, 1943.

Don C. Miller, U. S. District Attorney; by J. N. Curtis, Assistant District Attorney.

Duly sworn to by Joseph F. Smith. Jurat omitted in printing.

[fol. 15] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

[Title omitted]

ANSWER OF JOHN J. BOYLE, et al—Filed September 9, 1943

I. Now come defendants, John J. Boyle, County Treasurer of Cuyahoga County, Ohio, John A. Zangerle, Auditor of said County, and the Board of County Commissioners

of said County and admit the averments set forth in Paragraphs 1, 2, 3, 4, 5 and 6 of complaint filed herein.

II. These defendants deny the averment of Paragraph VII of the complaint that said lands and improvements so acquired by the United States are immune from state taxation by virtue of the provisions of the Constitution of the United States or of the terms of Sec. 5 of the Act of Congress of September 1, 1937.

III. These defendants admit that the said lands and improvements were placed upon the tax duplicate of said county and taxes assessed against the same for the years and in the amounts set forth in Paragraph VIII of the complaint, and defendants deny that said lands and improvements were unlawfully placed on the said duplicate and deny that said taxes were unlawfully assessed.

IV. Defendants admit that as averred in Paragraph 9 of the complaint said defendant County Treasurer asserts the lawfulness and validity of the lien of said taxes so assessed with the interest and penalties thereon, but defendants deny that they, or any of them, propose to or will attempt to enforce the lien of said taxes by means [fol. 16] other than by suit for that purpose authorized to be instituted against said Federal Public Housing Authority by the terms of Section 1405 of the Act of Congress of September 1, 1937 and Executive Order No. 9070 dated February 27, 1942.

V. Defendant John A. Zangerle, County Auditor, admits as averred in Paragraph 4 of the complaint that unless restrained and enjoined by this Court he will place the said property on the tax duplicate of said County for the current year and assess the same for taxes, and defendants the Board of County Commissioners admit that unless restrained by order of this Court it will continue to levy taxes against the lands on said tax list and duplicate as prepared by the said County Auditor. The defendants deny that such acts on their part would unlawfully encumber the plaintiff's lands or interfere with the use thereof.

VI. Defendants deny that the acts of defendants or any of them, in the complaint recited constitute an inter-

pretation or construction of the terms and provisions of Sections 5328 and 5625-3 of the General Code of Ohio so as to contravene the Constitution of the United States.

VII. By way of further defense, these defendants aver that by the terms and provisions of the Act of June 29, 1936 and the Act of September 1, 1937, the Authority, plaintiff herein, was authorized and required to enter into agreements with the political subdivision of the County of Cuyahoga authorized by law to levy taxes against the real property tax list and duplicate of said County, to pay to them respectively annual sums in an amount not in excess of that which would be payable as taxes thereupon if such property were not exempt therefrom, but said Authority has neglected and refused so to do, by reason whereof the said political subdivisions have been required to expend large sums of money derived from taxes levied against the other lands in said County for the payment of the cost of the governmental, educational utility and benevolent services and facilities rendered by said political subdivisions to many thousand inhabitants of the said projects con- [fol. 17] structed, owned and operated by said Authority.

VIII. Further answering, these defendants say that this Court lacks jurisdiction of the subject matter hereof, such suit being one to enjoin and restrain the assessment, levy and collection of a tax imposed pursuant to the laws of the State of Ohio, for any invasion of the rights of the plaintiff in respect thereto, a plain, speedy and efficient remedy is available in the Courts of such State.

Frank T. Cullitan, Prosecuting Attorney of Cuyahoga County, Ohio, and Ralph W. Edwards, Assistant Prosecuting Attorney, Attorneys for Defendants herein, Criminal Courts Building Cleveland, Ohio.

Duly sworn to by Ralph W. Edwards. Jurat omitted in printing.

[fol. 18] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO

[Title omitted]

STIPULATION AS TO CERTAIN FACTS—Filed September 9, 1943

Subject to the right of any party to object to the materiality of any fact stated herein, it is hereby stipulated as follows:

1. Title to the property described in Paragraph IV of the complaint vested in the United States in the manner and on the dates set out in Paragraph V of said complaint.

2. Since completion of the project in 1937, the individual units have been rented to and occupied by individual families of low income. Prior to January 1, 1940, the project was administered by the Federal Public Housing Authority but since that date it has been leased by the Federal Public Housing Authority to the Cleveland Metropolitan Housing Authority under a lease which requires that the property be used only as a site for a low-rent housing project as measured by standards set by the parties.

3. Taxes for the years 1935 to 1943, inclusive, have been assessed against the property in the name of the United States of America and the total taxes and assessments together with interest and penalties thereon approximate the totals set out in Paragraph VIII of the complaint. The parties specifically reserve the right to set forth by separate stipulation the amounts of special assessments included in that total.

4. From September 1, 1937, to January 1, 1940, payments in the sum of $16,026.78 per year were made by the United States Housing Authority under agreements whereby this sum was distributed between the City of Cleveland, the [fol. 19] County of Cuyahoga and the Board of Education in lieu of taxes for services rendered. For the year 1940, 1941 and 1942 payments in the same yearly amount, $16,026.18 were made each year by the Cleveland Metropolitan Housing Authority under similar agreements. The agreements have been rescinded by the County.

5. The defendant, County Treasurer, intends to enforce the collection of the delinquent taxes appearing on the tax

duplicate against the property by suit to foreclose the claimed tax liens. The defendant, County Auditor, intends to continue to assess and the defendants, City of Cleveland and Board of County Commissioners, intend to continue to levy real property taxes against the property in the future.

6. The assessed value of this land before its acquisition by the United States approximated $ — while it is currently assessed for taxes at a valuation of $ —.

7. The right is reserved to any party to introduce further evidence or to submit further affidavits not inconsistent with the facts herein stipulated.

Don C. Miller, United States Attorney; Frank E. Steel, Asst. U. S. Attorney, Frank T. Cullitan, Pros. Atty. By Ralph W. Edwards, Asst. Prosecutor. Attorney for defendants, John T. Boyle, County Treasurer, John A. Zangerle, County Auditor and Board of County Commissioners of Cuyahoga County, Ohio. Thos. A. Burke, Jr., Director of Law. By Joseph F. Smith, Attorney for City of Cleveland, Asst. Dir. of Law.

[fol. 20] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

Civil No. 21897

UNITED STATES OF AMERICA and FEDERAL PUBLIC HOUSING AUTHORITY, Plaintiffs,

vs.

JOHN J. BOYLE, County Treasurer of Cuyahoga County, Ohio; John A. Zangerle, County Auditor of Cuyahoga County, Ohio; Board of County Commissioners of Cuyahoga County, Ohio; and City of Cleveland, Defendants

MEMORANDUM OPINION—Filed November 12, 1943

Before Allen, Circuit Judge, and Jones and Freed, District Judges

ALLEN, Circuit Judge:

The full court agrees that it has jurisdiction of the parties and of the subject-matter of the litigation *Query* v. *United*

States, 316 U. S. 486. But since we do not unanimously agree that the real estate is being devoted to a public use, it seems advisable to give this question a more formal consideration than that embodied in the findings of fact and conclusions of law.

The real estate involved in this controversy was acquired by the United States through condemnation proceedings instituted by the Federal Emergency Administrator of Public Works, acting pursuant to the authority of Title II, ss 201, 202 and 203 of the National Industrial Recovery Act of June 16, 1933, 48 Stat. 200, 201, 202, 40 U. S. C., ss 401, 402, 403. These and related sections of the statute were held unconstitutional by the Court of Appeals for the Sixth Circuit in *United States* v. *Certain Lands in City of Louisville*, 78 Fed. (2d) 684, and by a District Court in *United States* v. *Certain Lands in City of Detroit*, 12 Fed. Supp. 345, upon the ground that such a taking was not for a public use and that the Congress is not authorized to appropriate money to promote the general welfare of even a great number of residents of the community in which the project was situated. While a writ of certiorari was filed to the decision in *United* [fol. 21] *States* v. *Certain Lands in City of Louisville*, the case was dismissed upon motion by the Government prior to oral argument in the Supreme Court, for the reason that in forty-one of the slum-clearance projects existing throughout the Nation the necessary land had been secured by negotiation, and in eight other cases, while condemnation proceedings were resorted to, no question had been raised as to the legality of the Act. It therefore was concluded that the Louisville case — a practical matter had become moot. 130 A. L. R. 1069, 1072.

Thereafter the United States, first through the Federal Emergency Administrator of Public Works and later through the Federal Public Housing Authority, constructed on the land so acquired the buildings necessary for a low-cost housing slum-clearance project.

In 1937 the Congress enacted the so-called "United States Housing Act of 1937," 50 Stat. 888, 42 U. S. C., ss 1401-1430. This Act created a Government corporation to be known as the United States Housing Authority, which was to function as an instrumentality of the United States in lending financial assistance to state and local housing agencies for the purpose of improving public housing conditions. In addition, § 1404 (d) empowered the President to transfer to the Au-

thority any right, interest or title held by any department or agency of the Federal Government in any housing or slum-clearance projects constructed or in process of construction on the date of the enactment of the Act, and pursuant thereto the real estate in question was transferred to the Authority by executive order No. 7732, effective November 1, 1937. The property was thereafter leased to the Cleveland Metropolitan Housing Authority under the provisions of § 1412 (b) and (d).

The principal legal question in the case is whether property so acquired may, under the restrictions of the United States Constitution, be used by the United States for low-cost housing and slum-clearance. It is contended that the employment by the Federal Government of real estate for the purposes described does not constitute a public use, and hence does not fall within the powers of the Federal Government.

With reference to the constitutionality of the United States Housing Act of 1937, which is attacked here, the [fol. 22] question is an open one. The previous decisions in this circuit which rule upon a similar question apply only to the housing and slum-clearance provisions of the National Industrial Recovery Act, 40 U. S. C., § 401 et seq. Moreover, in *Helvering* v. *Davis*, 301 U. S. 619, 640, the Supreme Court squarely overruled the doctrine relied upon for those decisions, and held that Congress has the power to impose a tax and appropriate money for the General welfare. *Steward Machine Co.* v. *Davis*, 301 U. S. 548; *United States* v. *Butler*, 297 U. S. 1, 65. Under these pronouncements the Court of Appeals for the Sixth Circuit, in *Bastian* v. *United States*, 118 Fed. (2d) 777, decided that a resettlement project established under the authority of the Emergency Relief Appropriation Act of April 8, 1935, c. 48, 49 Stat. 115, was valid. Substantially the same contentions as are urged against the constitutionality of the present projects were presented in that case and overruled.

Under the recent decisions of the Supreme Court, it is significant that the stated purpose of the Act under consideration is much broader than the purpose of the emergency housing sections of the National Industrial Recovery Act, 40 U. S. C., § 403 (a), which declared that the provisions in question were enacted "with a view to increasing

employment quickly (while reasonably securing any loans made by the United States) * * *". The purpose of the 1937 statute is announced in the body of the Act, as follows:

Title 42, U. S. C., § 1401.

> "It is hereby declared to be the policy of the United States to promote the general welfare of the Nation by employing its funds and credit, as provided in this chapter, to assist the several States and their political subdivisions to alleviate present and recurring unemployment and to remedy the unsafe and insanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income, in rural or urban communities, that are injurious to the health, safety, and morals of the citizens of the Nation."

It not only is no longer an open question that Congress has power to appropriate money to promote the general welfare, but the determination of the Congress that the projects are in furtherance of the general welfare is decisive, unless arbitrarily made and clearly wrong. *Helvering* v. *Davis*, supra, 640, 641. Here there is nothing to show that the legislative choice is clearly wrong. While it is true that in former periods of our history such projects might not have been necessary for the general welfare, it is also true, as stated in *Helvering* v. *Davis*, that "Needs that were [fol. 23] narrow or parochial a century ago may be interwoven in our day with the well-being of the Nation." Despite the difference in character of the slum areas existing in different parts of the country, as was found by the National Commission on Law Observance and Enforcement in its First Report on the Causes of Crime, the delinquency areas in these cities "display similar characteristics poor housing conditions; shifting and decreasing populations; great poverty and dependence; a marked absence of the home-owning class; a largely foreign population of inferior social status; unwholesome types of recreation; inadequate open-air play facilities." On the other hand, it is a matter of widespread knowledge that slum-clearance is a direct remedy for the insanitary, unhealthful conditions that arise out of the crowding and filth of the slum areas. Where old tenements are torn down, and replaced by new, clean, healthful buildings, open to light and air, there is a sharp decline in disease and delinquency. In Liverpool one such slum-

clearance project regained 77% of the old population, and another 99%. Yet after a short period crime had decreased among these same residents to less than 25% of the former figure, tuberculosis dropped from 4 to 1.9 per thousand, and the death rate dropped from 50 to 27 per thousand. 14 American Enc. Social Science, 95.

The problem of eliminating the slum throughout the country is national in scope and it lies within a domain which the individual States cannot reach, and over which the Congress alone has power.

The individual States have long been held to have power to enter into such projects within their borders. *Green* v. *Frazier*, 253 U. S. 233. In such cases the power was upheld on the ground of public use; and we think the same considerations compel the conclusion here that a public use exists. The fact that private individuals receive direct benefit from these projects does not deprive the public of their use. The public, after all, is merely an aggregation of private individuals. Public Schools, public universities, public parks, and many similar governmental institutions and projects which offer definite public benefit extend peculiar benefit to those who have immediate access to them. Direct use by the general public is not essential. *Strickley* v. *Highland Boy Mining Co.*, 200 U. S. 527, 531. Nor does the use fail to be public upon the ground that the immediate enjoyment of it is limited to a small group or even to a single person. *Fallbrook Irrigation Dist.* v. *Bradley*, 164 U. S. 112, 161; *Mt.* [fol. 24] *Vernon-Woodberry Cotton Duck Co.* v. *Alabama Interstate Power Co.*, 240 U. S. 30, 32; *Rindge Co.* v. *County of Los Angeles*, 262. U. S. 700, 707.

We think that a project so closely connected with the public health, safety and morals of the citizens of the Nation as the abolition on a national scope of the slum, plainly constitutes a project of public use, and is authorized under the Constitution of the United States. *Oklahoma City* v. *Sanders*, 94 Fed. (2d) 323 (C. C. A. 10). Cf. *Housing Authority of City of Dallas* v. *Higginbotham*, 143 S. W. (2d) 79, 130 A. L. R. 1053.

For these reasons, as well as those stated in the findings of fact and conclusions of law, it follows that the injunction prayed for is allowed.

[fol. 25] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

Civil No. 21897

UNITED STATES OF AMERICA and FEDERAL PUBLIC HOUSING AUTHORITY, Plaintiffs,

v.

JOHN J. BOYLE, County Treasurer of Cuyahoga County, Ohio; John A. Zangerle, County Auditor of Cuyahoga County, Ohio; Board of County Commissioners of Cuyahoga County, Ohio, and City of Cleveland, Defendants

DISSENTING OPINION—Filed November 12, 1943

JONES, J. (Dissenting):

I agree that property held by the United States, and employed by it in the execution of its constitutional powers and functions, may be held exempt from State taxation; but I think that in holding this property in the name of an instrumentality of the United States, for the use of special or selected classes or people, or specially selected groups, and with the intention to lease, and leasing it, to a State-created proprietary agency, is not such a governmental function or purpose as to permit its exemption from State, County or Municipal taxation. In such circumstances as presented here, I am of the opinion that the lands were not acquired and are not held for a governmental function or purpose within the right of constitutional sovereignty. I think title and use both are essential in testing the right to tax exemption of property held by the sovereign. If title only is the test, constitutional limitations are without meaning.

It will be noted that Mr. Justice Gray, in writing the opinion for the court in Van Brocklin vs. State of Tennessee, 117 U. S. 151 (relied upon so strongly by the Housing Authority), repeatedly and consistently refers to tax exemption of property of the United States used for governmental functions or purposes. In that case, the property was acquired and held by the United States to enforce and liqui-

date a tax lien, and this it seems to me was in furtherance of the governmental function of protecting and preserving its revenues. Thus, as I think, property held by the United States, or by an instrumentality of the Federal government, only may be exempt from taxation by a State, County or [fol. 26] City in which the property is situated, where the property is devoted to or used for a governmental function or purpose.

No matter how desirable slum clearance and low-cost housing may be, it is not in my opinion such a Federal function as to permit exemption of the property used therefor from State taxation. On the contrary, it consistently has been held that the power of the States to protect the lives, health and property of their citizens, and to preserve good order and public morals, is a power originally and always belonging to the States and not surrendered by them to the general government. Cooley, Principles of Constitutional Law. If the Federal government may acquire and hold property free from State taxation and devote it to any use or purpose not related to governmental functions, there is no limitation of Federal power over State sovereignty. Such right is not implicit in Federal sovereignty, nor is it express or to be implied in the provisions of the Federal Constitution. I think the property involved in this case is subject to the taxes assessed.

Considering the matter from another aspect, what has been done to impair State sovereignty, simply stated, is this: the Federal government has acquired this property and holds it through its agency, the Housing Authority, for the purpose of furnishing low-cost housing to special groups or classes of inhabitants. This certainly is a private use of the land. The State, County and City furnish benefits and services to these residents just as they furnish services, facilities and benefits to other residents. Thus to require the State to give services and protection to this property, and deprive it of its revenues to be used for such purposes, without making any substantial or adequate provision to compensate for such loss of revenues, seems to me to be contrary to all sense of Federal or Constitutional right,—a dangerous denial of State sovereignty.

[fol. 27] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

FINDINGS OF FACT AND CONCLUSSIONS OF LAW—Filed November 12, 1943

FINDINGS OF FACT

I

The plaintiff, United States of America, acquired the property involved in this proceeding upon the filing of declarations of taking in 1934 and 1935 on the specific dates and in the condemnation proceedings as set out in paragraph V of the complaint. By Executive Order 7732, effective November 1, 1937, all right, interest and title to said land was transfererd to the United States Housing Authority (now known as the Federal Public Housing Authority), a wholly owned government corporation created under the Act of September 1, 1937, 50 Stat. 888.

II

Following acquisition of title by the United States, there was constructed on this property by the plaintiffs the necessary buildings and structures in connection with its use as a low-cost housing development. Since completion of the project in 1937, the individual units have been rented to and occupied by individual families of low income.

III

Prior to January 1, 1940, the project was administered by the Federal Public Housing Authority but since that date it has been leased to the Cleveland Metropolitan Housing [fol. 28] Authority, a public housing agency created under the laws of Ohio, under a lease which requires that the property be used only as a site for a low-rent housing project, as measured by standards set by the parties.

IV

Taxes and assessments for the years 1935 to 1943, inclusive, have been assessed against the property in the name of

the United States of America and the total taxes and assessments appearing on the tax duplicates, together with interest and penalties, approximate the sum of $1,558,814.83.

V

From September 1, 1937, to January 1, 1940, payments in the sum of $16,026.78 per year were made by the United States Housing Authority under agreements whereby this sum was distributed between the City of Cleveland, the County of Cuyahoga and the Board of Education in lieu of taxes for services rendered, pursuant to the authority to make such payments set out in sec. 13 of the Act of September 1, 1937, 50 Stat. 888, 894. For the years 1940, 1941 and 1942, payments in the same yearly amount, $16,026.78 were made each year by the Cleveland Metropolitan Housing Authority under similar agreements. In 1943, the County of Cuyahoga rescinded its part in these agreements.

VI

The defendant, John J. Boyle, as County Treasurer of Cuyahoga County, is actively asserting the validity of the taxes so assessed and it is his intention to enforce their collection against the property by suit to foreclose the claimed tax lien. The defendant, John A. Zangerle, County Auditor of Cuyahoga County, the defendant, Board of County Commissioners of Cuyahoga County, and the defendant, City of Cleveland, are also actively asserting that this property is subject to taxation and it is their intention to continue to assess and levy real property taxes there against unless restrained by order of this Court.

CONCLUSIONS OF LAW

I

This Court has jurisdiction of the parties and of the subject matter.

[fols. 29-31] II

Property owned by the United States or by the Federal Public Housing Authority, formerly the United States Housing Authority, is not subject to taxation by the State of Ohio or any of its legal subdivisions. *Mayo et al.* v. *United States*, 319 U. S. 441.

III

The immunity of federally owned property extends to and includes an immunity from special assessments.

IV

The use of this property as a site for a low-cost housing project is a public use.

V

The taxes and assessments appearing of record against this property are null and void and, in the absence of congressional consent, said property will remain immune from taxation as long as it is owned by the United States or the Federal Public Housing Authority.

VI

The plaintiffs are entitled to a permanent injunction directing cancel-ation of the taxes and assessments and restraining the defendants from taking any action to collect or levy taxes against this property in the future.

Florence E. Allen, United States Circuit Judge.
E. B. Freed, United States District Judge.

[fol. 32] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

Civil No. 21897

UNITED STATES OF AMERICA and FEDERAL PUBLIC HOUSING AUTHORITY, Plaintiffs,

v.

JOHN J. BOYLE, County Treasurer of Cuyahoga County, Ohio; John A. Zangerle, County Auditor of Cuyahoga County, Ohio; Board of County Commissioners of Cuyahoga County, Ohio, and City of Cleveland, Defendants

JUDGMENT—Filed November 19, 1943

This case having come on for a hearing on the plaintiffs' motion for a temporary injunction, before a Special

District Court of three Judges, pursuant to Sec. 266 of the Judicial Code, and the Court having heard the arguments of all parties, by their respective attorneys, and upon consideration of the pleadings and stipulation of the parties, and the parties having submitted the case for entry of a final order, it is hereby ordered, adjudged and decreed:

1. The property described hereafter, since the dates set out following the individual descriptions, has been and is now owned by the United States of America or by its wholly-owned instrumentality, the Federal Public Housing Authority, formerly the United States Housing Authority. Since the date of its acquisition, this property has been immune from any form of taxation or special assessment and, in the absence of congressional consent, said property cannot be subjected to any form of state taxation or special assessment as long as it continues to be owned by the United States of America or the Federal Public Housing Authority.

[fol. 33] 2. The aforesaid property is described on the tax duplicates of Cuyahoga County, Ohio, as follows:

I

Book 44, Item 532: "Original Lots 60 and 61, converse and other subdivisions. Between Cedar and Central Streets west line of East 28th to East 30th Streets."

Book 44, Item 533: "Original Lots 57, 58, 59, 60. Between Cedar and Central Streets and west line of 28th Street to a point 1102.45 feet west on Cedar." (Acquired September 10, 1934)

II

Book 44, Item 546: "Scovill Avenue to Case Court, west of East 55th Street to East 40th Street." (Acquired February 18, 1935)

III

Book 79, Item 444: "Block A. Division Street, original Lot 51 of 450.28 feet by 316.83 feet."

Book 79, Item 445: "Original Lot 51 on Division Street, Block B. 416.86 feet frontage on Division Street."

Book 79, Item 446: "Original Lot 51, Division Street, Block. F. frontage 428.23 feet."

Book 79, Item 447: "Original Lot 51, on Division Street, Block G, having a frontage of 608.05 feet."

Book 79, Item 453: "Original Lot 51, fronting on West 25th Street. Block C, frontage 136.57 feet."

Book 79, Item 454: "Original Lot 51, West 25th Street, Block D, frontage 444.25 feet on West 25th."

Book 79, Item 455: "Original Lot 51, West 25th Street, Block E, frontage 221.31 feet on West 25th Street." (Acquired April 16, 1935)

3. The taxes and assessments appearing of record against this property since its acquisition by the United States of America are null and void.

[fols. 34-37] 4. The defendants, John J. Boyle, County Treasurer of Cuyahoga County, and John A. Zangerle, County Auditor of Cuyahoga County, their successors and assigns, are hereby enjoined from taking any action to enforce the purported tax liens against this property by collection, sale or otherwise; and said defendants are hereby ordered and required to cancel said taxes of record and to remove this land from the tax rolls as long as it remains tax-exempt.

5. The plaintiffs shall recover their costs.

Entered this 19 day of Nov. 1943.

Florence E. Allen, Judge, United States Circuit Court of Appeals for the Sixth Circuit. ——— ———, Judge, United States District Court for the Northern District of Ohio. E. B. Freed, Judge, United States District Court for the Northern District of Ohio.

[fol. 38] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

MOTION BY DEFENDANT, CITY OF CLEVELAND, TO AMEND THE COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed November 20, 1943

Now comes the defendant, City of Cleveland, and moves the Court that the Court's findings of fact and conclusions of law be amended as follows:

1. By setting forth in its findings of fact a statement as to whether or not a substantial constitutional question was involved.

2. By stating in its conclusions of law whether or not any state statute was held unconstitutional.

Thomas A. Burke, Jr., Director of Law, by Joseph F. Smith, Assistant Director of Law, Attorneys for Defendant, City of Cleveland.

[fols. 39-43] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ORDER AMENDING FINDINGS OF FACT—Filed Jan. 18, 1944

The court, having considered the motion of the Defendant, City of Cleveland, to amend the court's findings of fact and conclusions of law, grants the first request of the motion and denies the second request of the motion.

It is, therefore, ordered that the findings of fact be amended by adding thereto: "VII—A substantial constitutional question was involved."

Florence E. Allen, United States Circuit Judge.
E. B. Freed, United States District Judge.

[fol. 44] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR BY DEFENDANT, CITY OF CLEVELAND. —Filed Feb. 9, 1944

The defendant, City of Cleveland, file the following Assignments of Error on which they will rely on their appeal to the Supreme Court of the United States from the judgment of this court entered the 19th day of November, 1943, The Court erred:

(1) In not granting the defendant, City of Cleveland's motion to dismiss the complaint.

(2) In perpetually enjoining the defendants from taking any action to collect or levy taxes against the property in question and in directing a cancellation of taxes and assessments heretofore levied on the property in question and holding the same to be null and void.

(3) In holding that real property acquired and owned by the United States of America, or its agency, the Federal Public Housing Authority, for the purpose of low cost housing and slum clearance and subleased by said Federal Public Housing Authority to the Cleveland Metropolitan Housing and thereafter sublet to numerous tenants for residence purposes, was devoted to a public use and was immune from taxation.

(4) In holding that such property was immune from taxation under the laws of the State of Ohio, and particularly in holding that it was immune from taxation without application being made to the State of Ohio in accordance with the laws of said State for the placing of said property on the exempt list.

(5) In holding that the officials of the State of Ohio and the defendant, City of Cleveland, should be restrained from levying and attempting to collect taxes, as required of them under the laws of the State of Ohio.

[fol. 45] (6) In its failure to hold that Section 5 of the Act of September 1, 1937, and particularly that part of it known as 42 U. S. C. A. 1405 (e), is illegal and unconstitutional.

(7) In its failure to distinguish between general taxes and special assessments under 42 U. S. C. A. 1405 (e).

(8) In its holding set forth in its Special Findings of Law and Fact as follows:

(a) "Property owned by the United States or by the Federal Public Housing Authority, formerly the United States Housing Authority, is not subject to taxation by the State of Ohio or any of its legal subdivisions. *Mayo et al.*, v. *United States*, 319 U. S. 441."

(b) "The immunity of federally owned property extends to and includes an immunity from special assessments."

(c) "The use of this property as a site for a low-cost housing project is a public use."

(d) "The taxes and assessments appearing of record against this property are null and void and, in the absence of congressional consent, said property will remain immune from taxation as long as it is owned by the United States or the Federal Public Housing Authority."

(e) "The plaintiffs are entitled to a permanent injunction directing cancellation of the taxes and assessments and restraining the defendants from taking any action to collect or levy taxes against this property in the future."

(9) In its failure to find that the Constitution of the United States does not grant to the Federal Government the right to acquire and hold real estate for the purpose of building thereon low-cost housing and that by reason thereof the acquisition and holding of land for such purpose is unconstitutional.

(10) In its failure to declare that Sections 5328 and 5625-3 of the General Code of Ohio are valid, and that

the property in question is subject to those sections and under sections of the Ohio laws relating to taxation, and that said sections do not contravene the Constitution of the United States.

[fol. 46] (11) In rendering final judgment for the plaintiffs when it should have been for the defendants.

(12) In overruling this defendant's motion for new trial.

Wherefore, the defendant, City of Cleveland, prays that said judgment be reversed and that a judgment be rendered in favor of the defendants, and that defendants have their costs of this appeal.

Thomas A. Burke, Jr., Director of Law; Joseph F. Smith, Assistant Director of Law, Of Counsel, 204 City Hall, 'Phone—Ch. 0970, Attorneys for City of Cleveland.

[fol. 47] [File endorsement omitted.]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENTS OF ERROR OF JOHN J. BOYLE ET AL.—Filed February 11, 1944

County defendants-appellants filed the following assignments of error on which they will rely on their appeal to the Supreme Court of the United States from the judgment of this Court entered the 19th day of November, 1943:

The Court erred:

(1) In ruling that the real property described in the complaint, acquired and owned by the United States of America for the purpose of low cost housing and slum clearance, was immune from taxation pursuant to and in accordance with the laws of Ohio.

(2) In ruling that Ohio General Code Sections 5328 and 5625-3 providing for the taxation of all real property in the state, contravene the Constitution of the United States insofar as they relate to the taxation of

the real property described in the complaint and owned by the United States of America.

(3) In ruling that the taxes levied by the said county and city against the said real property while so owned by the United States of America, were null and void.

(4) In enjoining the county defendants from collecting the taxes heretofore levied and assessed against said real property of the United States of America, and from hereafter assessing and levying taxes against the same.

(5) In not dismissing the plaintiffs' complaint.

(6) In rendering final judgment for the plaintiffs when it should have been for the defendants.

Frank T. Cullitan, Prosecuting Attorney of Cuyahoga County, Ohio, and Ralph W. Edward, Assistant Prosecuting Attorney, Attorneys for Appellants-Defendants. Criminal Courts Building Cleveland Ohio.

[fol. 48] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL OF CITY OF CLEVELAND—February 9, 1944.

It appearing to the court that the defendant, City of Cleveland, has filed its petition for appeal to the Supreme Court of the United States, and has filed therein its Assignments of Error and also its statement as to the jurisdiction of the Supreme Court of the United States, as required by Rule 12 of the Supreme Court rules, duly disclosing that the Supreme Court of the United States has jurisdiction upon appeal to review the decree in qustion.

It is hereby ordered by the Court that the appeal prayed for be and the same is hereby allowed and granted to the Supreme Court of the United States from the decree rendered in said cause, on the 19th day of November, 1943, and

that said defendant give a bond with good and sufficient security in the sum of two hundred fifty Dollars ($250.00), that if as Appellant shall prosecute its appeal to effect, and answer all damages and costs if they fail to make their appeal good.

Dated this 9th day of February, 1944.

Paul Jones, District Judge.

[fols. 49-56] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL OF JOHN J. BOYLE et al.—February 11, 1944

It appearing to the court that the Cuyahoga County defendants have filed their petition for appeal to the Supreme Court of the United States, and have filed therein their Assignments of Error and also their statement as to the jurisdiction of the Supreme Court of the United States, as required by Rule 12 of the Supreme Court rules, duly disclosing that the Supreme Court of the United States has jurisdiction upon appeal to review the decree in question.

It is hereby ordered by the Court that the appeal prayed for be and the same is hereby allowed and granted to the Supreme Court of the United States from the decree rendered in said cause, on the 19th day of November, 1943, and that said defendants give a bond with good and sufficient security in the sum of two hundred fifty Dollars ($250.00), that they as Appellants shall prosecute its appeal to effect, and answer all damages and costs if they fail to make their appeal good.

Date this 11th day of February, 1944.

Paul Jones, District Judge.

[fol. 57] SUPREME COURT OF THE UNITED STATES

No. 68

[Title omitted]

STATEMENT OF POINTS OF CITY OF CLEVELAND AND DESIGNATION OF PORTIONS OF RECORD TO BE PRINTED—Filed May 8, 1944

The points on which appellant intends to rely in this Court in this case are as follows:

(1) The Court erred in not granting the defendant, City of Cleveland's motion to dismiss the complaint.

(2) The Court erred in perpetually enjoining the defendants from taking any action to collect or levy taxes against the property in question and in directing a cancellation of taxes and assessments heretofore levied on the property in question and holding the same to be null and void.

(3) The Court erred in holding that real property acquired and owned by the United States of America, or its agency, the Federal Public Housing Authority, for the purpose of low cost housing and slum clearance and subleased by said Federal Public Housing Authority to the Cleveland Metropolitan Housing and thereafter sublet to numerous tenants for residence purposes, was devoted to a public use and was immune from taxation by the State of Ohio.

(4) The Court erred in holding that the officials of the State of Ohio and the defendant, City of Cleveland, should be restrained from levying and attempting to collect taxes, as required of them under the laws of the State of Ohio.

(5) The Court erred in its failure to hold that Section 5 of the Act of September 1, 1937, and particularly that part of it known as 42 U. S. C. A. 1405 (e), is illegal and unconstitutional.

[fol. 58] (6) The Court erred in its failure to distinguish between general taxes and special assessments under 42 U. S. C. A. 1405 (e).

(7) The Court erred in its holdings set forth in its Special Findings of Law and Fact as follows:

(a) "Property owned by the United States or by the Federal Public Housing Authority, formerly the United States Housing Authority, is not subject to taxation by the State of Ohio or any of its legal subdivisions. *Mayo et al.* v. *United States*, 319 U. S. 441."

(b) "The immunity of federally owned property extends to and includes an immunity from special assessments."

(c) "The use of this property as a site for a low-cost housing project is a public use."

(d) "The taxes and assessments appearing of record against this property are null and void and, in the absence of congressional consent, said property will remain immune from taxation as long as it is owned by the United States or the Federal Public Housing Authority."

(e) "The plaintiffs are entitled to a permanent injunction directing cancellation of the taxes and assessments and restraining the defendants from taking any action to collect or levy taxes against this property in the future."

(8) The Court erred in its failure to find that the Constitution of the United States does not grant to the Federal Government the right to acquire and hold real estate for the purpose of building thereon low-cost housing and that by reason thereof the acquisition and holding of land for such purpose is unconstitutional.

(9) The Court erred in rendering final judgment for the plaintiffs when it should have been for the defendants.

[fol. 59] Only the following portions of the record as filed in this Court need be printed by the Clerk for the hearing of the case:

1. Complaint and motion for temporary injunction.
2. Answer of defendant, City of Cleveland.
3. Answer of defendant, John J. Boyle, and other county officers.

4. Stipulation between counsel re: agreement as to certain facts.

5. Supplemental oral stipulation as to facts made at trial, which reads as follows:

'That neither the United States nor any instrumentality of the United States has made application to the State Tax Commission, or any other instrumentality of the State of Ohio, seeking to have the property in question exempted from taxation, and that no steps whatsoever have been taken to carry out the procedure outlined by the laws of the State of Ohio for having property placed on the exempt list.'

6. Final judgment entry of November 19, 1943.

7. Motion by defendant, City of Cleveland, to amend the Findings of Fact and Conclusions of Law (Filed Nov. 20, 1943).

8. Order of court amending Findings of Fact and Conclusions of Law.

9. Assignment of Errors.

10. Order allowing appeal.

11. Majority opinion and minority opinion of trial court.

12. Findings of Law and Fact by trial court.

Robert M. Morgan, Assistant Director of Law; Thomas A. Burke, Jr., Director of Law; Joseph F. Smith, Assistant Director of Law, 204 City Hall, Cleveland, Ohio, Attorneys for the City of Cleveland.

[fol. 60] Notice

We hereby acknowledge notice of the filing of the within Statement of Points and Designation of Portions of Record to be printed, together with a copy of the same, this 8th day of May, 1944.

Charles Fahy, Solicitor General, Attorneys for The United States of America and The Federal Public Housing Authority.

Notice

We hereby acknowledge notice of the filing of the within Statement of Points and Designation of Portions of Record

to be printed, together with a copy of the same, this — day of May, 1944.

Frank T. Cullitan, Prosecuting Attorney of Cuyahoga County, by Ralph W. Edwards, Assistant County Prosecutor, Attorneys for John J. Boyle, John A. Zangerle and Board of County Commissioners of Cuyahoga County, Ohio.

[fol. 61] IN THE SUPREME COURT OF THE UNITED STATES

No. 69

[Title omitted]

STATEMENT OF POINTS ON WHICH APPELLANTS JOHN J. BOYLE, ET AL., INTEND TO RELY AND PARTS OF RECORD NECESSARY FOR CONSIDERATION THEREOF—Filed May 8, 1944

The appellants intend to rely upon the contentions that the specially constituted district court erred:

(1) In ruling that the real property described in the complaint, acquired and owned by the United States of America for the purpose of low cost housing and slum clearance, was immune from taxation pursuant to and in accordance with the laws of Ohio.

(2) In ruling that Ohio General Code Sections 5328 and 5625-3 providing for the taxation of all real property in the state, contravene the Constitution of the United States insofar as they relate to the taxation of the real property described in the complaint and owned by the United States of America.

(3) In ruling that the taxes levied by the said county and city against the said real property while so owned by the United States of America, were null and void.

(4) In enjoining the county appellants from collecting the taxes heretofore levied and assessed against said real property of the United States of America, and from hereafter assessing and levying taxes against the same.

(5) In not dismissing the appellees' complaint.

(6) In rendering final judgment for the appellees when it should have been for the appellants.

The appellants deem only the following portions of the record as filed to be necessary for the consideration of the contentions above enumerated:

[fol. 62] 1. Complaint and motion for temporary injunction.

2. Answer of defendant, City of Cleveland.

3. Answer of defendant, John J. Boyle, and other county offices.

4. Stipulation between counsel re: agreement as to certain facts.

5. Supplemental oral stipulation as to facts made at trial, which reads as follows:

> "That neither the United States nor any instrumentality of the United States has made application to the State Tax Commission, or any other instrumentality of the State of Ohio, seeking to have the property in question exempted from taxation, and that no steps whatsoever have been taken to carry out the procedure outlined by the laws of the State of Ohio for having property placed on the exempt list."

6. Final judgment entry of November 19, 1943.

7. Motion by defendant, City of Cleveland, to amend the Findings of Fact and Conclusions of Law (Filed Nov. 20, 1943.)

8. Order of court amending Findings of Fact and Conclusions of Law.

9. Assignment of Errors.

10. Order allowing appeal.

11. Majority opinion and minority opinion of trial court.

12. Findings of Law and Fact by trial court.

Frank T. Cullitan, Prosecuting Attorney of Cuyahoga County, Ohio, and Ralph W. Edwards, Assistant Prosecuting Attorney, Attorneys for Appellants, Criminal Courts Bldg., Cleveland, Ohio.

RWE-sw
5-6-44

[fol. 63] NOTICE

We hereby acknowledge notice of the filing of the within Statement of Points and Designation of Portions of Record

to be printed, together with a copy of the same, this 8th day of May, 1944.

Charles Fahy, Solicitor General, Attorneys for the United States of America and The Federal Public Housing Authority.

NOTICE

We hereby acknowledge notice of the filing of the within Statement of Points and Designation of Portions of Record to be printed, together with a copy of the same, this 6th day of May, 1944.

Thomas A. Burke, Director of Law for City of Cleveland, by Joseph F. Smith, Assistant City Law Director, Attorneys for City of Cleveland.

[fol. 63a] [File endorsement omitted.]

[fol. 64] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1944

Nos. 68 and 69

[Title omitted]

ORDER POSTPONING FURTHER CONSIDERATION OF JURISDICTION—May 22, 1944

The statements of jurisdiction in these cases having been submitted and considered by the Court, further consideration of the question of the jurisdiction of this Court is postponed to the hearing of the cases on the merits.

Counsel are requested to discuss in their briefs and on oral argument the questions (1) whether sec. 266 of the Judicial Code is properly applicable to these cases so as to give this Court jurisdiction of the appeals (compare, e. g., Ex parte Public National Bank, 278 U. S. 96, and Rorick v. Commissioners, 307 U. S. 208, with Spielman Motor Sales Co. v. Dodge, 295 U. S. 89); and (2) whether the land in controversy would be taxable even if the Federal Housing Act of 1937 were unconstitutional.

May 22, 1944.

Endorsed on Cover: File No. 48,422, 48,423. D. C. U. S., Northern Ohio. Term No. 68. The City of Cleveland, Appellant, vs. The United States of America and Federal Public Housing Authority. Term No. 69. John J. Boyle, County Treasurer of Cuyahoga County, John A. Zangerle, County Auditor of Cuyahoga County, Board of County Commissioners of Cuyahoga County, Ohio, Appellants, vs. The United States of America and Federal Public Housing Authority. Filed April 24, 1944. Term No. 68, O. T. 1944, 69 O. T. 1944.

(3147)